

Application No. 10/088,856  
Amendment Dated 01/23/2007  
Reply to Office Action of 10/23/2006

**Remarks/Arguments:**

Claims 1, 6, 7, 10, 12, 13, 18, 21, 22, 26, 29, 31, 32 and 37 are pending in the application.

Claims 1, 6, 7, 10, 22, 29, 31 and 37 are rejected.

Claims 12, 13, 18, 21 and 32 are objected to.

***Response to Amendment***

Applicants note:

1. The applicants' amendments and arguments are sufficient to overcome the 35 U.S.C. § 103, obviousness rejection labeled paragraph 4 maintained in the last office action, which is hereby withdrawn.
2. The applicants' amendments and arguments are sufficient to overcome the 35 U.S.C. § 112, second paragraph rejections labeled paragraph 6 of the last office action, which are hereby withdrawn.

***Election/Restrictions***

3. Claim 26 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

As previously stated, Applicants request rejoinder of the process claim, claim 26, finding basis in the MPEP at section 821.04(b) under Rejoinder of Process Requiring an Allowable Product where it is stated that:

*... if applicant elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must depend from or otherwise require all the limitations of an allowable product claim for that process invention to be rejoined. Upon rejoinder of claims directed to a previously nonelected process invention, the restriction requirement between the elected product and rejoined process(es) will be withdrawn.*

Applicants believe that the present circumstances fulfill this set of criteria and respectfully request that the process claim, claim 26, is rejoined on allowance of claim 1.

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### **Claim Rejections - 35 USC § 112**

Claims 1, 7, 10, 22, 29, 31 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner states that the amendment to the definition of R<sup>32</sup> where R<sup>32</sup> bears the substituent C<sub>1-4</sub>alkoxyC<sub>1-4</sub>alkyl is not described in the specification with respect to the genus of formula (I).

In response to this rejection, Applicants have deleted this group from claims 1 and 6.

5. Claims 1, 6, 7, 10, 22, 29, 31 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following reasons apply:

a) Claim 1 and claims dependent thereon are vague and indefinite in that it is not known what is meant by the definition of R<sup>p'</sup>, where there is no variable R<sup>p'</sup> in formula (I).

Applicants believe that this rejection is the result of a typographical error. The group “-R<sup>p</sup>X<sup>9</sup>-R<sup>p</sup>R<sup>32</sup>” under “17)” in claim 1 should read “-R<sup>p</sup>X<sup>9</sup>-R<sup>p</sup>R<sup>32</sup>”. See for example page 7, line 22 of the PCT specification. Applicants have corrected this error in the attached claims.

b) Claim 6 recites the limitation “R<sup>5</sup>” in the sub-group labeled 2’) within the definition of R<sup>9</sup>. There is insufficient antecedent basis for this limitation in the claim.

Applicants believe the rejection here is the result of a typographical error. The phrase under “2’)” should read “C<sub>1-5</sub>alkylX<sup>2</sup>C(O)R<sup>15</sup> wherein X<sup>2</sup> represents -O- or -NR<sup>16</sup>- in which R<sup>16</sup> represents hydrogen, C<sub>1-3</sub>alkyl or C<sub>1-3</sub>alkoxyC<sub>2-3</sub>alkyl and R<sup>15</sup> represents..”. Applicants believe that this becomes clear as a typographical error when this phrase is compared with the specification for example at page 6, lines 4-5 and page 8 lines 21-22 etc. Applicants have corrected this error in claim 6.

### **Claim Objections**

6. Claims 12, 13, 18, 21 and 32 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must be stated in the alternative. See MPEP § 608.01(n).

Applicants refer to the telephone call between the undersigned and the Examiner on January 23<sup>rd</sup>, 2007 wherein this objection was discussed. The Examiner indicated that this objection was in error and could be disregarded in our response. Applicants have therefore not made any changes to these claims. Should the Examiner wish to discuss this further please call the undersigned.

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The above amendments have been made without prejudice to Applicants right to prosecute any cancelled subject matter in a timely filed continuation application.

Applicants believe the application is in condition for allowance, which action is respectfully requested.

Although Applicants believe no fees are due, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment to deposit account No. 50-3231, referencing Attorney Docket No. Z70598-1P US.

Respectfully submitted,  
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